

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

* * * * *

Richard Lee Anthony Occhino,

Plaintiff,

vs.

REPORT AND RECOMMENDATION

Housing & Redevelopment Authority
of Duluth, MN, Barbara Ahercich –
Asst. Director, Deane Meysman-Martin –
Dir. of Tenant Services, Pamela Benson –
Housing & Tenant Supervisor, Jim or
John J. – Applications Specialist,

Defendants.

Civ. No. 05-247 (JMR/RLE)

* * * * *

This matter came before the undersigned United States Magistrate Judge pursuant to a routine review, made in accordance with the provisions of Title 28 U.S.C. §636(b)(1)(A). By Order dated April 7, 2005, the District Court adopted our Report and Recommendation, and denied the Plaintiff's Motion for leave to proceed in forma pauperis ("IFP"). On August 29, 2005, the District Court's Order was summarily affirmed by the Eighth Circuit Court of Appeals.

By Order of October 31, 2005, we directed the Plaintiff to pay the \$250.00 filing fee, if he intended to pursue this action. See, Local Rule 4.2(a), Local Rules of

the United States District Court for the District of Minnesota (directing the Clerk of Court to strike a Complaint where the Plaintiff has not paid his filing fee and an application for leave to proceed IFP is denied). We also forewarned the Plaintiff that his failure to provide the Clerk of Court with the requisite \$250.00 filing fee, by no later than thirty (30) days from the date of that Order, would result in a recommendation that his Complaint be dismissed, but without prejudice, for failure to prosecute.

The time for compliance with our Order has since passed, and our review of the file reveals that the Plaintiff has not paid the necessary filing fee. As such, we are left with no choice but to recommend that the Clerk of Court be directed to strike the Plaintiff's Complaint, and that the Plaintiff's action be dismissed, but without prejudice, for his failure to comply with our Order of October 31, and for failure to prosecute.

NOW, THEREFORE, It is --

RECOMMENDED:

1. That the Clerk of Court be directed to strike the Plaintiff's Complaint, in accordance with Local Rule 4.2(a), Local Rules for the United States District Court for the District of Minnesota.

2. That the Plaintiff's Complaint be dismissed, but without prejudice, for failure to comply with this Courts Order of October 31, 2005, and for failure to prosecute.

Dated: December 20, 2005

s/Raymond L. Erickson
Raymond L. Erickson
CHIEF U.S. MAGISTRATE JUDGE

NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.1(c)(2), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than January 9, 2006**, a writing which specifically identifies those portions of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing **by no later than January 9, 2006**, unless all interested

parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.